

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

OLLIE GREENE, *et al.*,

Plaintiffs,

v.

TOYOTA MOTOR CORPORATION, *et al.*,

Defendants.

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CAUSE NUMBER: 3:11-cv-0207-N

**APPENDIX IN SUPPORT OF
DEFENDANTS' RESPONSE TO PLAINTIFFS' EMERGENCY MOTION
TO EXTEND DATE FOR REBUTTAL EXPERT DISCLOSURE AND REPORTS**

TO THE HONORABLE COURT:

COME NOW, Defendants Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc., and Toyota Motor Sales, U.S.A., Inc.; Volvo Group North America, LLC f/k/a Volvo Trucks North America; Strick Trailers, LLC; John Fayard Moving & Warehouse, LLC; and Dolphin Line, Inc. (collectively "Defendants"), and would respectfully show the Court as follows:

EXHIBIT	DESCRIPTION	PAGE NUMBERS
Exhibit 1	December 30, 2013 Letter from Aubrey "Nick" Pittman	APP 1-2
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Exhibit 7	January 3, 2014 email correspondence from counsel for Strick, VGNA, Fayard and Dolphin	APP 14-16

Exhibit 8	U.S. Postal System tracking information	APP 17-18
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Respectfully submitted,

/s/ David P. Stone

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INC., AND TOYOTA MOTOR SALES,
U.S.A., INC.**

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/s/ Joseph F. Henderson _____

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**ATTORNEYS FOR DEFENDANT
DOLPHIN LINE, INC.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to all known counsel of record in this cause in accordance with the Federal Rules of Civil Procedure on this 3rd day of January, 2014.

/s/ David P. Stone _____

To: Page 2 of 2

2013-12-30 22:35:05 (GMT)

From: Aubrey Nick Pittman



The Pittman Law Firm, P.C.

ATTORNEYS AT LAW

AUBREY "NICK" PITTMAN
DIRECT DIAL (214) 459-3325

December 30 2013

VIA FACSIMILE

David Stone
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2501 North Harwood St., Suite 1700
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John S. Kenefick
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Kathleen A. Clark
Don Dawson
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243 West Congress, 600 Marquette Bldg.
Detroit MI 48266-6243

**RE: *Ollie Greene, et al v. Toyota Motor Corporation et al*; Cause No. 3:11-cv-00207-N
in the United States District Court for the Northern District of Texas, Dallas
Division.**

Dear Counsel:

As you know, disclosure of rebuttal experts and opinions is quickly approaching. Plaintiffs' potential rebuttal experts have indicated that they would like to inspect the exemplar vehicles used by your experts, the crash test vehicles (e.g. bullet, target, and trailer) used by your experts and the Volvo tractor that was involved in the May 28, 2010 incident. Please confirm that the experts can inspect these items this week in order to use their inspections in their rebuttal opinions.

We look forward to receiving your prompt response.

Sincerely,

Aubrey "Nick" Pittman

The Pittman Law Firm, P.C.

100 Crescent Court, Suite 700 • Dallas, Texas 75201 • 214-459-3454 tel • 214-853-5912 fax
Dallas • Houston • www.thepittmanlawfirm.com

To: Page 1 of 2

2013-12-30 22:35:05 (GMT)

From: Aubrey Nick Pittman

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FACSIMILE TRANSMITTAL COVER SHEET

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COMPANY: Bowman and Brooke, LLP	TELEPHONE: 972-616-1700
TO: Pat Fitzgerald/Randy Howry	FACSIMILE: 512-474-8557
COMPANY: Howry Breen & Herman, LLP	TELEPHONE: 512-474-7300
TO: Kathleen Clark/Don Dawson	FACSIMILE: 313-256-8913
COMPANY: Dawson & Clark, P.C.	TELEPHONE: 313-256-8900
TO: John Kenefick	FACSIMILE: 214-747-0942
COMPANY: Macdonald Devin, P.C.	TELEPHONE: 214-744-3300
TO: Todd Parks/Ashley de la Cerda	FACSIMILE: 214-760-1670
COMPANY: Walters, Balido & Crain, LLP	TELEPHONE: 214-749-4805
TO: Michael Sharp/Scott Self	FACSIMILE: 972-934-9200
COMPANY: Fee, Smith, Sharp & Vitullo, LLP	TELEPHONE: 972-934-9100
FROM: Aubrey "Nick" Pittman	SENDER'S FACSIMILE NUMBER: 214-853-5912
COMPANY: THE PITTMAN LAW FIRM, P.C.	DATE/TIME: December 30, 2013
TELEPHONE NUMBER: (214) 459-3454	CLIENT/MATTER NUMBER: 00179/0002
TOTAL NUMBER OF PAGES, INCLUDING COVER: 2	CC:

☒ URGENT
 ☐ FOR REVIEW
 ☐ PLEASE COMMENT
 ☐ PLEASE REPLY
 ☐ PLEASE RECYCLE

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From: Kurt C. Kern
Sent: Tuesday, December 31, 2013 1:08 AM
To: Aubrey "Nick" Pittman (pittman@thepittmanlawfirm.com);
dwashington@dwashlawfirm.com
Cc: David Stone; Jude T. Hickland; Brian E. Mason; Pat Fitzgerald
(pfitzgerald@howrybreen.com); John Carlson (jcarlson@howrybreen.com); Randy
Howry (rhowry@howrybreen.com); Don Dawson; Kathleen Clark (kathleen@dawson-
clark.com); todd.parks@wbclawfirm.com; Ashley.deCerdea@wbclawfirm.com; Scott W.
Self (sself@feesmith.com); jkenefick@macdonalddevin.com;
jhenderson@macdonalddevin.com
Subject: Greene v. Toyota - Requested Vehicle Inspections

Nick:

I just saw your request to conduct multiple vehicle inspections, including those of the crash tested vehicles, in advance of the deadline for rebuttal reports this Friday (even though you've had our expert reports for 10 days). Although tomorrow is New Year's Day we'll do what we can to accommodate your request. The crash tested vehicles are in Phoenix and the Volvo tractor and exemplar vehicles are in Houston. I'll contact our consultants regarding coordinating your inspections and once I'm able to communicate with them, given the Holidays, I'll let you know the available logistical options. I wish you hadn't waited so long to make this request. Again, setting aside the adversarial process that is our profession, Happy New Years.

Kurt

Kurt Christopher Kern
Bowman and Brooke LLP
2501 North Harwood Street, Suite 1700
Dallas, Texas 75201
Direct: 972.616.1711
Fax: 972.616.1701
KKern@BowmanandBrooke.com

From: David Stone
Sent: Tuesday, December 31, 2013 1:36 PM
To: Kurt C. Kern; Aubrey "Nick" Pittman (pittman@thepittmanlawfirm.com); dwashington@dwashlawfirm.com
Cc: Jude T. Hickland; Brian E. Mason; Pat Fitzgerald (pfitzgerald@howrybreen.com); John Carlson (jcarlson@howrybreen.com); Randy Howry (rhowry@howrybreen.com); Don Dawson; Kathleen Clark (kathleen@dawson-clark.com); todd.parks@wbclawfirm.com; Ashley.delaCerde@wbclawfirm.com; Scott W. Self (sself@feesmith.com); jkenefick@macdonalddevin.com; jhenderson@macdonalddevin.com; Kim Weiner
Subject: RE: Greene v. Toyota - Requested Vehicle Inspections

Nick, the 4Runner and Volvo tractor used in the crash test can be inspected in Phoenix on Friday, January 3.. The trailer that was used was leased and is back in the possession of its owner. If your "rebuttal experts" want to see it, let me know and I will see what can be arranged.

I am checking on the subject Volvo tractor and the exemplar 4Runner used by Mr. Carr. Those are in Houston. I don't believe any of the other exemplar 4Runners used by our experts are still in their possession.

Please let me know when you wish to have these inspections done and who will be there.

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Email: David.Stone@BowmanandBrooke.com
www.bowmanandbrooke.com

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From: David Stone
Sent: Thursday, January 02, 2014 3:28 PM
To: Kurt C. Kern; Aubrey "Nick" Pittman (pittman@thepittmanlawfirm.com);
dwashington@dwashlawfirm.com
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner
Subject: RE: Vehicle Inspections

Nick, we have still not heard from you about whether you want to inspect the Volvo and 4Runner used in the crash test in Phoenix and/or the subject Volvo tractor and exemplar 4Runner in Houston tomorrow, January 3. If you want to inspect at either or both of these location tomorrow, I need to know by 4 pm today. Otherwise, I will have to release that date.

David P. Stone
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From: Kurt C. Kern
Sent: Tuesday, December 31, 2013 6:23 PM
To: Aubrey "Nick" Pittman (pittman@thepittmanlawfirm.com); dwashington@dwashlawfirm.com
Cc: David Stone; Jude T. Hickland; Brian E. Mason; Kim Weiner
Subject: Vehicle Inspections

Nick:

I'm not sure if it got communicated to you, but further to my e-mail of very early this morning, we've confirmed that the crash test vehicles in Phoenix and the exemplar vehicles in Houston are available for inspection on Friday, January 3rd. Please let me know if you and/or your experts want to inspect the various vehicles that day and I will supply you with the logistics regarding such inspections. Happy New Year.

Kurt

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From: David Stone
Sent: Friday, January 03, 2014 1:39 PM
To: pittman@thepittmanlawfirm.com; Kurt C. Kern; Daryl Washington
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner; John Carlson
(jcarlson@howrybreen.com); Pat Fitzgerald; 'rhowry@howrybreen.com'
(rhowry@howrybreen.com); todd.parks@wbclawfirm.com; Don Dawson;
kathleen@dawson-clark.com; jkenefick@macdonalddevin.com; Joseph F. Henderson
(JHenderson@macdonalddevin.com); 'Scott W. Self' (sself@feesmith.com)
Subject: RE: Vehicle Inspections

Nick, even though we provided full disclosure of our expert reports and supporting materials, including thorough documentation of the crash test with our expert disclosures on December 20, you did not make any request to inspect the crash tested 4Runner and Volvo until December 31, to which we responded on the same day. Further, I was puzzled by your urgent and untimely request to inspect the exemplar 4Runner and subject Volvo tractor since you have known for nearly two years that those vehicles were at Carr Engineering in Houston and available for inspection there.

Nevertheless, your experts certainly could have inspected either the crash tested 4Runner and Volvo in Phoenix, or the vehicles in Houston, today, as we had offered. You chose not respond to our offer. However, with reasonable notice, we can make these vehicles available for inspection next week, with the exception of Tuesday and Thursday. If you still want to inspect those vehicles, please let me know immediately when, by whom and how long you want to inspect these vehicles.

As for your request to extend the rebuttal report deadline, we do not believe an extension to January 20 will work with the other deadlines set by Judge Ramirez after yesterday's hearing. While I cannot speak for the other defendants, we might consider a request for a shorter extension of that deadline, in exchange for some other discovery accommodations from plaintiffs. If you want to have a meaningful conference on that issue, please feel free to call Kurt or me.

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From: Aubrey Nick Pittman [mailto:pittman@thepittmanlawfirm.com]
Sent: Thursday, January 02, 2014 7:07 PM
To: David Stone; Kurt C. Kern; Daryl Washington; Aubrey Nick Pittman
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner
Subject: Re: Vehicle Inspections

David:

Does this mean Toyota is unwilling to agree to an extension of the expert rebuttal date?

Also, as you know our experts would not be able to be in both places tomorrow so I'm not sure how that was supposed to work.

From: David Stone <David.Stone@bowmanandbrooke.com>
Date: Thu, 2 Jan 2014 21:27:44 +0000
To: Kurt C. Kern<Kurt.Kern@bowmanandbrooke.com>; Aubrey \"Nick\" Pittman
(pittman@thepittmanlawfirm.com)<pittman@thepittmanlawfirm.com>;
dwashington@dwashlawfirm.com<dwashington@dwashlawfirm.com>
Cc: Jude T. Hickland<Jude.Hickland@bowmanandbrooke.com>; Brian E.
Mason<Brian.Mason@bowmanandbrooke.com>; Kim Weiner<Kim.Weiner@bowmanandbrooke.com>
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Subject: Vehicle Inspections

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Kurt

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From: Kurt C. Kern
Sent: Friday, January 03, 2014 2:29 PM
To: David Stone; pittman@thepittmanlawfirm.com; Daryl Washington
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner; John Carlson (jcarlson@howrybreen.com); Pat Fitzgerald; 'rhowry@howrybreen.com' (rhowry@howrybreen.com); todd.parks@wbclawfirm.com; Don Dawson; kathleen@dawson-clark.com; jkenefick@macdonalddevin.com; Joseph F. Henderson (JHenderson@macdonalddevin.com); 'Scott W. Self' (sself@feesmith.com)
Subject: RE: Vehicle Inspections

Nick:

Further to David's e-mail and having given it considerable thought the Toyota Defendants (even though we think your request for an extension of time for Plaintiffs to submit rebuttal reports is very late/untimely for the reasons stated in the Court's Order earlier today and in David's e-mail) would propose that in exchange for agreeing that Plaintiffs can have up to 5 PM on Friday, January 10th to submit all rebuttal reports, Plaintiffs agree as follows:

1. Plaintiffs will present Dr. Burton for deposition on January 14th or 15th at his office in Alpharetta, Georgia;
2. Plaintiffs will present Keith Freidman for two consecutive days of deposition, not to exceed more than 8 hours each day on January 21st and 22nd in Austin;
3. Plaintiffs will present Rhoades Stephenson for two consecutive days of deposition, not to exceed more than 8 hours each day on January 23rd and 24th;
4. Plaintiffs will present Jeff Vick for deposition on either January 27th or 28th; and
5. If necessary Plaintiffs will agree to allow biomechanical defense expert Dr. Catherine Corrigan to be presented for deposition up to and including March 3rd.

As always if you wish to confer regarding this matter please call me.

Kurt

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From: David Stone <David.Stone@bowmanandbrooke.com>
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To: Kurt C. Kern <Kurt.Kern@bowmanandbrooke.com>; Aubrey \"Nick\" Pittman
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dwashington@dwashlawfirm.com<dwashington@dwashlawfirm.com>

Cc: Jude T. Hickland<Jude.Hickland@bowmanandbrooke.com>; Brian E. Mason<Brian.Mason@bowmanandbrooke.com>; Kim Weiner<Kim.Weiner@bowmanandbrooke.com>
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Kurt

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if you suspect you have received this in error, please notify me by replying and then delete both the message and reply. Thank you.

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Sent: Friday, January 03, 2014 2:30 PM
To: Kurt C. Kern; David Stone; pittman@thepittmanlawfirm.com; Daryl Washington
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner; John Carlson
(jcarlson@howrybreen.com); Pat Fitzgerald; 'rhowry@howrybreen.com'
(rhowry@howrybreen.com); todd.parks@wbclawfirm.com; Kathleen Clark;
jkenefick@macdonalddevin.com; Joseph F. Henderson
(JHenderson@macdonalddevin.com); 'Scott W. Self' (sself@feesmith.com)
Subject: RE: Vehicle Inspections

Mr. Pittman,

Strick would likewise agree to the proposal by Mr. Kern.

Regards,
Don

Donald H. Dawson, Jr.
Dawson & Clark, P.C.
243 West Congress, Suite 600
Detroit, MI 48226
(313) 256-8906
(313) 256-8913 fax
ddawson@dawson-clark.com

From: Kurt C. Kern [mailto:Kurt.Kern@bowmanandbrooke.com]
Sent: Friday, January 03, 2014 3:29 PM
To: David Stone; pittman@thepittmanlawfirm.com; Daryl Washington
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner; John Carlson (jcarlson@howrybreen.com); Pat Fitzgerald;
'rhowry@howrybreen.com' (rhowry@howrybreen.com); todd.parks@wbclawfirm.com; Don Dawson; Kathleen Clark;
jkenefick@macdonalddevin.com; Joseph F. Henderson (JHenderson@macdonalddevin.com); 'Scott W. Self'
(sself@feesmith.com)
Subject: RE: Vehicle Inspections

Nick:

Further to David's e-mail and having given it considerable thought the Toyota Defendants (even though we think your request for an extension of time for Plaintiffs to submit rebuttal reports is very late/untimely for the reasons stated in the Court's Order earlier today and in David's e-mail) would propose that in exchange for agreeing that Plaintiffs can have up to 5 PM on Friday, January 10th to submit all rebuttal reports, Plaintiffs agree as follows:

1. Plaintiffs will present Dr. Burton for deposition on January 14th or 15th at his office in Alpharetta, Georgia;
2. Plaintiffs will present Keith Freidman for two consecutive days of deposition, not to exceed more than 8 hours each day on January 21st and 22nd in Austin;

From: John Carlson <jcarlson@howrybreen.com>
Sent: Friday, January 03, 2014 3:18 PM
To: Scott W. Self; 'John S. Kenefick'; Kurt C. Kern; David Stone;
pittman@thepittmanlawfirm.com; Daryl Washington
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner; Pat Fitzgerald; Randy Howry;
todd.parks@wbclawfirm.com; Don Dawson; kathleen@dawson-clark.com; Joseph F. Henderson
Subject: RE: Vehicle Inspections

VGNA will agree to the proposal as well.

JEC

John E. Carlson, Of Counsel
HOWRY BREEN & HERMAN, LLP
1900 Pearl Street
Austin, Texas 78705
512.474.7300
512.474.8557 fax

From: Scott W. Self [<mailto:sself@feesmith.com>]
Sent: Friday, January 03, 2014 2:40 PM
To: 'John S. Kenefick'; 'Kurt C. Kern'; David Stone; pittman@thepittmanlawfirm.com; Daryl Washington
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner; John Carlson; Pat Fitzgerald; Randy Howry;
todd.parks@wbclawfirm.com; Don Dawson; kathleen@dawson-clark.com; Joseph F. Henderson
Subject: RE: Vehicle Inspections

Fayard Moving likewise agrees to Mr. Kern's proposal.

Thank you,
Scott

From: John S. Kenefick [<mailto:JKenefick@macdonalddevin.com>]
Sent: Friday, January 03, 2014 2:37 PM
To: 'Kurt C. Kern'; David Stone; pittman@thepittmanlawfirm.com; Daryl Washington
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner; John Carlson (jcarlson@howrybreen.com); Pat Fitzgerald;
'rhowry@howrybreen.com' (rhowry@howrybreen.com); todd.parks@wbclawfirm.com; Don Dawson; kathleen@dawson-clark.com; Joseph F. Henderson; Scott W. Self
Subject: RE: Vehicle Inspections

Dolphin will agree to this proposal

From: Kurt C. Kern [<mailto:Kurt.Kern@bowmanandbrooke.com>]
Sent: Friday, January 03, 2014 2:29 PM
To: David Stone; pittman@thepittmanlawfirm.com; Daryl Washington

Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner; John Carlson (jcarlson@howrybreen.com); Pat Fitzgerald; 'rhowry@howrybreen.com' (rhowry@howrybreen.com); todd.parks@wbclawfirm.com; Don Dawson; kathleen@dawson-clark.com; John S. Kenefick; Joseph F. Henderson; 'Scott W. Self' (sself@feesmith.com)
Subject: RE: Vehicle Inspections

Nick:

Further to David's e-mail and having given it considerable thought the Toyota Defendants (even though we think your request for an extension of time for Plaintiffs to submit rebuttal reports is very late/untimely for the reasons stated in the Court's Order earlier today and in David's e-mail) would propose that in exchange for agreeing that Plaintiffs can have up to 5 PM on Friday, January 10th to submit all rebuttal reports, Plaintiffs agree as follows:

1. Plaintiffs will present Dr. Burton for deposition on January 14th or 15th at his office in Alpharetta, Georgia;
2. Plaintiffs will present Keith Freidman for two consecutive days of deposition, not to exceed more than 8 hours each day on January 21st and 22nd in Austin;
3. Plaintiffs will present Rhoades Stephenson for two consecutive days of deposition, not to exceed more than 8 hours each day on January 23rd and 24th;
4. Plaintiffs will present Jeff Vick for deposition on either January 27th or 28th; and
5. If necessary Plaintiffs will agree to allow biomechanical defense expert Dr. Catherine Corrigan to be presented for deposition up to and including March 3rd.

As always if you wish to confer regarding this matter please call me.

Kurt

Kurt Christopher Kern
Bowman and Brooke LLP
2501 North Harwood Street, Suite 1700
Dallas, Texas 75201
Direct: 972.616.1711
Fax: 972.616.1701
KKern@BowmanandBrooke.com

From: David Stone
Sent: Friday, January 03, 2014 1:39 PM
To: pittman@thepittmanlawfirm.com; Kurt C. Kern; Daryl Washington
Cc: Jude T. Hickland; Brian E. Mason; Kim Weiner; John Carlson (jcarlson@howrybreen.com); Pat Fitzgerald; 'rhowry@howrybreen.com' (rhowry@howrybreen.com); todd.parks@wbclawfirm.com; Don Dawson; kathleen@dawson-clark.com; jkenefick@macdonalddevin.com; Joseph F. Henderson (JHenderson@macdonalddevin.com); 'Scott W. Self' (sself@feesmith.com)
Subject: RE: Vehicle Inspections

Nick, even though we provided full disclosure of our expert reports and supporting materials, including thorough documentation of the crash test with our expert disclosures on December 20, you did not make any request to inspect the crash tested 4Runner and Volvo until December 31, to which we responded on the same day. Further, I was puzzled by your urgent and untimely request to inspect the exemplar 4Runner and subject Volvo tractor since you have known for nearly two years that those vehicles were at Carr Engineering in Houston and available for inspection there.

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Aubrey "Nick" Pittman
Kristin Kay Schroeder
THE PITTMAN LAW FIRM, P.C.
100 Crescent Court, Suite 700
Dallas, Texas 75201-2112

See
Street,
or PO Box
City, State, ZIP+4

PS Form 3800, August 2006 See Reverse for Instructions

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December 23, 2013 , 10:38 am	Sorting Complete	DALLAS, TX 75201
December 23, 2013 , 8:56 am	Arrival at Unit	DALLAS, TX 75201
December 22, 2013 , 1:00 pm	Processed through USPS Sort Facility	DALLAS, TX 75398
December 21, 2013 , 6:44 pm	Processed through USPS Sort Facility	DALLAS, TX 75398
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